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STATUTES CITED

In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 984

INDEPENDENT COAL & COKE COMPANY AND CARBON COUNTY LAND COMPANY, petitioners

v.

UNITED STATES OF AMERICA AND CARBON COUNTY

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Circuit Court of Appeals is not reported. It appears at R. 31–35.

JURISDICTION

The decree of the Circuit Court of Appeals was entered November 21, 1925. (R. 35.) The jurisdiction of this Court to issue the writ of certiorari applied for is predicated upon Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938.

STATEMENT

By its bill filed May 16, 1924, in the United States District Court for the District of Utah, the United States sought a decree holding the Carbon County Land Company and the Independent Coal & Coke Company trustees for the United States in respect to certain coal lands in Carbon County, Utah, which had been patented to the Carbon County Land Company by the State of Utah on February 10, 1920. The Independent Coal & Coke Company claims an interest in a portion of the land through the Carbon County Land Company.

Carbon County, Utah, was made a party defendant because of a claim to a part of the land under a tax sale in 1921.

By the bill the following situation was disclosed (R. 1–5):

During 1901–1904 upon application of the proper officials of the State of Utah the Secretary of the Interior *certified* to the State, under grants made to it by the Act of July 16, 1894, c. 138, 28 Stat. 107 (the Utah Enabling Act), the lands involved in the instant case. In 1907 the United States brought suit in the United States District Court of Utah against the Carbon County Land Company and others for a decree setting aside certain contracts of sale from the State of Utah to some of the defendants covering these lands. These contracts had been assigned to the Carbon County Land Company. The theory of the bill, which was brought under authority of

Williams v. *United States*, 138 U. S. 514, was that the lands were coal in character, known to be such at the time the State's right would otherwise have attached, and hence not eligible to pass to the State, and by fraudulent representations of the defendants or some of them the Secretary of the Interior was induced to certify the lands to the State.

The United States succeeded in that suit, and a decree was entered June 8, 1914, declaring it the owner of the lands and quieting its title to them as against the claims of the defendants. (R. 2–4.) This decree was affirmed November 15, 1915, by the Circuit Court of Appeals (R. 4), Opinion 228 Fed. 431, 439. (R. 6–18.) (Appeal dismissed, 248 U. S. 594.) This decree, dated June 8, 1914, was in the present tense and adjudged "That the plaintiff *is* the owner and entitled to the possession of the following described property," etc., and that "said defendants, and each of them *have* no right, title or interest" and that "the plaintiff be and is hereby adjudged to be the true and lawful owner." (Italics ours.)

The decree did not purport to settle the title as of the date of the commencement of the suit, but as of the date of the decree, June 8, 1914, and it was not limited by its terms to quieting the plaintiff's title merely as against the contracts issued by the State in 1901.

Notwithstanding this decree the State of Utah did not conform its subsequent action thereto but thereafter patented the land to this same Carbon

County Land Company on February 10, 1920. (R. 4.) Upon being apprised of this action, and after unsuccessful negotiations with the State of Utah, the Government brought the instant suit, pleading the former judgment as making the matter *res adjudicata*. (R. 5.)

Each of the defendants filed a motion to dismiss resting mainly upon the proposition that the suit was barred under Section 8 of the Act of March 3, 1891, c. 559, 26 Stat. 1093, because more than six years had elapsed since the cause of action arose (apparently having reference to the date of the certification to the State of Utah of the lands by the Secretary of the Interior). (R. 19, 20, 22.) The motions were sustained (R. 23), the District Court holding (R. 24)—

> The certification by the Secretary of the Interior of the lands in question to the State of Utah was in legal effect a patent and in my opinion comes within the meaning of the word patent as used in Section 8 of the Act of March 3, 1891.

A decree dismissing the bill was entered January 21, 1925. (R. 24.) The Circuit Court of Appeals reversed that decree except as to Carbon County, and remanded the case with instructions to permit the other defendants to answer. (R. 35.)

SUMMARY OF ARGUMENT

I. THE FORMER ADJUDICATION CONCLUDES THE PETITIONERS. AS BETWEEN THEM OR THEIR ASSIGNORS AND THE UNITED STATES THE DECREE IN 1914, USING

WORDS IN THE PRESENT TENSE, DETERMINED IN EFFECT THAT THE STATE, WHOSE CONTRACTS OF SALE THEY HELD, THEN HAD NO TITLE. THE CONVEYANCE THEY LATER OBTAINED FROM THE STATE CONVEYED NO DIFFERENT RIGHT OR NEW INTEREST. SUCH TITLE, IF ANY, AS THE STATE EVER ACQUIRED BY VIRTUE OF THE STATUTE OF LIMITATIONS WAS ACQUIRED BEFORE THE DECREE OF 1914 WAS ENTERED AND WAS CONCLUDED AS TO THE PETITIONERS BY THE FORMER ADJUDICATION.

II. THE CASE IS NOT ONE WHICH THIS COURT SHOULD REVIEW.

ARGUMENT

I

THE MATTER INVOLVED IS RES ADJUDICATA

In the former suit the title claimed by the defendants was derived from the State under contracts of sale from the State made in 1901. In the present suit the same defendants or their assignees claim a title derived from the State by patent issued in 1920.

The former adjudication of June 8, 1914, determined as between the United States and the assignees of the State, that the *State* had obtained no title by the certification and that the United States was the owner of the land. In the present suit the petitioners seek to avoid the claim of *res adjudicata* by asserting that *after* the 1907 suit the State ultimately acquired good title by lapse of time, and the expiration of six years from the date of the certification, giving the State title under the

statute of limitations, which the petitioners or their assignors purchased from the State after the former decree. The statute of limitations relied on is the Act of March 3, 1891, Section 8, c. 559, 26 Stat. 1093, it being claimed that a suit to cancel a certification is the same as a suit to cancel a patent, and therefore within the statute.

In other words it is contended that the decree in the 1907 suit is not *res adjudicata* as to the later acquired title of the State. (Petition for Certiorari, p. 8.) This sounds fair and if the State had acquired a title from the United States *after* the decree in the former suit, we would have difficulty in claiming that these defendants on purchasing such title would be barred from asserting it by the former adjudication.

The Record however will not supply the facts to support this claim.

The certifications were made in 1901 and 1903. (R. 8–11.)

If the statute of limitations on suits to cancel patents applies, and *runs from the date of certification*, as claimed by the petitioners, the State's title ripened in 1907 and 1909.

The former suit was commenced in 1907, but the decree was not entered until 1914, after the State's title ripened (if it did ripen) under the statute of limitations. The decree determines the title as of 1914, and by its express terms states that the title *is* in the plaintiff, and the defendants *have* none.

As between the parties it adjudged that the State *then* had no title. The State obtained nothing more after the decree of 1914. When its deeds were made to petitioners in 1920, it had no other or different title, so far as the statute of limitations goes, than it had when the decree was entered.

Consequently the claim of the petitioners that in 1920 they purchased a title from the State "newly acquired" since the decree is unsupported by the Record.

If the State had no title when it made the contracts of sale in 1901–3, but acquired a title by virtue of a statute of limitations in 1907–9, that subsequently acquired title, under well-settled rules, inured to the benefit of its vendees. Consequently if the statute of limitations point is good, the defendants in the former suit, having no valid interest in the lands when the former suit was brought, acquired it pending the suit and before the decree. They might have succeeded if they had brought this situation to the attention of the court in the former suit, or if they had seen to it that the decree was so worded as to adjudicate the title as of 1907 instead of at the date of trial or decree. They did neither. The decree was that they had no valid interest in 1914, and it thus, in effect, as to them, determined that the State had no title then. The State acquired nothing since 1914, and the plea of *res adjudicata* is good. This is a proper case for the application in all its rigor of the rule that a matter once adjudicated cannot be reopened. The